

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
CASE NO. 3:21-CV-069-RJC-DCK**

CBD INDUSTRIES, LLC,

**Plaintiff and
Counterclaim Defendant,**

v.

MAJIK MEDICINE, LLC,

**Defendant, Counterclaimant and
Third-Party Plaintiff,**

v.

cbdMD, Inc.

Third-Party Defendant.

ORDER

THIS MATTER IS BEFORE THE COURT on CBD industries, LLC and cbdMd, Inc.’s “Motion To Dismiss” (Document No. 25) filed July 6, 2021. This motion has been referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b), and immediate review is appropriate. Having carefully considered the motion, the record, and applicable authority, the undersigned will deny this motion to dismiss as moot.

Federal Rule of Civil Procedure 15 applies to the amendment of pleadings and allows a party to amend once as a matter of course within 21 days after serving, or “if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier.” Fed.R.Civ.P. 15(a)(1).

By the pending motion, CBD Industries and cbdMD, Inc. seek the dismissal of Defendant Majik Medicine, LLC's "...Answer, Defenses, And Counterclaims" (Document No. 19). (Document No. 25). However, Defendant Majik Medicine timely-filed a "...First Amended Answer, Defenses, Counterclaims and Third Party Complaint" (Document No. 31) on September 9, 2021. Subsequently, CBD Industries and cbdMD, Inc. have filed a "Motion To Dismiss" (Document No. 36) the "First Amended . . . Counterclaims And Third Party Complaint (Document No. 31).

It is well settled that a timely-filed amended pleading supersedes the original pleading, and that motions directed at superseded pleadings may be denied as moot. Young v. City of Mount Ranier, 238 F.3d 567, 573 (4th Cir. 2001) ("The general rule ... is that an amended pleading supersedes the original pleading, rendering the original pleading of no effect."); see also, Fawzy v. Wauquiez Boats SNC, 873 F.3d 451, 455 (4th Cir. 2017) ("Because a properly filed amended complaint supersedes the original one and becomes the operative complaint in the case, it renders the original complaint 'of no effect.'").

Based on the foregoing, the undersigned finds that CBD Industries and cbdMD, Inc.'s original "Motion To Dismiss" (Document No. 25) should be denied as moot.

IT IS, THEREFORE, ORDERED that CBD industries, LLC and cbdMd, Inc.'s "Motion To Dismiss" (Document No. 25) is **DENIED AS MOOT**.

SO ORDERED.

Signed: October 5, 2021



David C. Keesler
United States Magistrate Judge

